


BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 1999-215-C - ORDER NO. 1999-629
SEPTEMBER 3, 1999

IN RE: Application of BlueStar Networks, Inc. for a Certificate of Public Convenience and Necessity to Provide Intrastate Interexchange, Local Exchange, and Exchange Access Telecommunications Services in South Carolina and for Alternative Regulation of its Services in Accordance with Procedures Adopted in Docket No. 95-661-C and Docket No. 97-467-C.) ORDER GRANTING) AUTHORITY TO) PROVIDE) INTEREXCHANGE,) LOCAL EXCHANGE,) AND EXCHANGE) ACCESS SERVICE AND) APPROVING) ALTERNATIVE) REGULATION
---	--



This matter comes before the Public Service Commission of South Carolina (the “Commission”) by way of the Application of BlueStar Networks, Inc. (“BlueStar” or the “Company”) requesting a Certificate of Public Convenience and Necessity authorizing it to provide intrastate interexchange, local exchange, and exchange access telecommunications services within the State of South Carolina. BlueStar also requested alternative regulation of its interexchange business service offerings pursuant to the procedures approved in Docket No. 95-661-C and flexible regulation of its local exchange and exchange access service offerings pursuant to the procedures approved in Docket No. 97-467-C. The Application was filed pursuant to S.C. Code Ann. § 58-9-280 and the Regulations of the Commission.

By letter, the Commission's Executive Director instructed the Company to publish, one time, a prepared Notice of Filing in newspapers of general circulation in the areas affected by the Application. The purpose of the Notice of Filing was to inform interested parties of the manner and time in which to file the appropriate pleadings for participation in the proceedings. BlueStar complied with this instruction and provided the Commission with proof of publication of the Notice of Filing.

A Petition to Intervene was received from the South Carolina Telephone Coalition ("SCTC"). On June 29, 1999, Counsel for SCTC filed with the Commission a Stipulation in which BlueStar stipulated that it would seek authority only in non-rural local exchange ("LEC") service areas of South Carolina and that it would not provide any local service to any customer located in a rural incumbent's service area, unless and until the Company provided written notice of its intent prior to the date of the intended service. BlueStar also stipulated that it was not asking the Commission to make a finding at this time regarding whether competition is in the public interest for rural areas. BlueStar agreed to abide by all State and Federal laws and to participate to the extent that it may be required to do so by the Commission in support of universally available telephone service at affordable rates. The SCTC withdrew its opposition to the granting of a statewide Certificate of Public Convenience and Necessity provided the conditions contained in the Stipulation are met. The Stipulation is approved and attached as Order Exhibit 1.

A hearing was commenced on August 25, 1999, at 10:30 a.m., in the Commission's Hearing Room. The Honorable Philip T. Bradley, Chairman, presided.

BlueStar was represented by B. Craig Collins, Esquire. Florence P. Belser, Staff Counsel, represented the Commission Staff.

Richard L. Burtner, Chief Financial Officer and Secretary-Treasurer of BlueStar, appeared and testified in support of the Company's application. The record reveals that BlueStar is a Tennessee corporation which is authorized to transact business in the State of South Carolina as a foreign corporation by the South Carolina Secretary of State. According to Mr. Burtner, BlueStar is a data carrier that will provide Internet-protocol based telecommunications services using DSL technology, which will allow for high-speed Internet access and other high-bandwidth data transfer applications not available through current ISDN, cable modems, or T1 technology. BlueStar will use advanced technology to offer South Carolina's business and residential customers low-cost, high-speed connectivity alternatives to existing ISDN lines, T1 lines, and cable modems.

Mr. Burtner described the managerial, technical, and financial resources of BlueStar. According to Mr. Burtner, BlueStar's senior management, employees, and advisors possess significant experience in the telecommunications and data networking and Internet industries. With regard to BlueStar's financial position, Mr. Burtner stated that BlueStar has received substantial financing and working capital from outside investors and has entered into a multi-million dollar equipment financing agreement. With regard to technical qualifications, Mr. Burtner offered that BlueStar has knowledgeable technical managers and staff and further offered that BlueStar has already begun deploying its digital subscriber line ("DSL")-based network in Tennessee and

Kentucky. Additionally, Mr. Burtner stated that BlueStar is certified to provide service in six states and has applications pending in approximately twelve other states.

Mr. Burtner offered that approval of BlueStar's application will further the public interest by expanding the availability of technologically-advanced telecommunications facilities in South Carolina. Additionally, the presence of BlueStar in the South Carolina telecommunications market will provide consumers with the option of selecting from a wide range of innovative and personalized services that offer a number of significant technologic advantages in comparison to other access media. Further, BlueStar's DSL services will allow a user to access the Internet and talk on the same phone line simultaneously (by ordering voice services from another carrier), and Mr. Burtner submits that the ability to transmit data and voice concurrently will greatly expand the telecommunications opportunities for business and residential consumers.

Mr. Burtner testified that BlueStar will participate in the support of universally available telephone service at affordable rates to the extent required by the Commission and that BlueStar will provide service that meets the service standards of the Commission. In addition, Mr. Burtner's testimony indicates the Company will operate in accordance with Commission rules, regulations, guidelines, and Commission Orders.

After full consideration of the applicable law, the Company's Application, and the evidence presented at the hearing, the Commission hereby issues its findings of fact and conclusions of law:

FINDINGS OF FACT

1. The Commission finds BlueStar is organized as a corporation under the laws of the State of Tennessee and is authorized to conduct business in the State of South Carolina by the Secretary of State.

2. The Commission finds BlueStar has the technical, financial, and managerial resources sufficient to provide the services requested. S.C. Code Ann. §58-9-280 (B)(1) (Supp. 1998).

3. The Commission finds BlueStar will provide services which will meet the service standards of the Commission. S.C. Code Ann. § 58-9-280(B) (Supp. 1998).

4. The Commission finds that the services proposed by BlueStar “will not adversely impact the availability of affordable local exchange service.” S.C. Code Ann. § 58-9-280(B)(3) (Supp. 1998).

5. The Commission finds that BlueStar will support universally available telephone service at affordable rates. S.C. Code Ann. § 58-9-280 (B)(4) (Supp. 1998).

6. The Commission finds that the provision of local exchange service by BlueStar “does not otherwise adversely impact the public interest.” S.C. Code Ann. § 58-9-280 (B)(5) (Supp. 1998).

CONCLUSIONS OF LAW

1. Based on the above findings of fact, the Commission determines that a Certificate of Public Convenience and Necessity should be granted to BlueStar authorizing BlueStar authority to provide intrastate interexchange, local exchange, and exchange access telecommunications services within the State of South Carolina. The

provision of local exchange telecommunications shall be subject to the Stipulation between BlueStar and the SCTC, and the terms of the Stipulation between BlueStar and SCTC are approved and adopted as a portion of this Order. Any proposal to provide local services in rural service areas is subject to the terms of the Stipulation.

2. BlueStar shall file, prior to offering services in South Carolina, its final tariff of its service offerings conforming to all matters discussed with Staff and comporting with South Carolina law in all matters.

3. The Commission adopts a rate design for BlueStar for its resale of interexchange residential services which includes only maximum rate levels for each tariff charge. A rate structure incorporating maximum rate levels with the flexibility for adjustment below the maximum rate levels has been previously adopted by the Commission. In Re: Application of GTE Sprint Communications Corporation, etc., Order No. 84-622, issued in Docket No. 84-10-C (August 2, 1984).

BlueStar shall not adjust its residential interexchange rates below the approved maximum level without notice to the Commission and to the public. BlueStar shall file its proposed rate changes, publish its notice of such changes, and file affidavits of publication with the Commission two weeks prior to the effective date of the changes. However, the public notice requirement is waived, and therefore not required, for reductions below the maximum cap in instances which do not affect the general body of subscribers or do not constitute a general rate reduction. In Re: Application of GTE Sprint Communications, etc., Order No. 93-638, issued in Docket No. 84-10-C (July 16, 1993). Any proposed increase in the maximum rate level for interexchange residential

services reflected in the tariff which would be applicable to the general body of the Company's subscribers shall constitute a general ratemaking proceeding and will be treated in accordance with the notice and hearing provisions of S.C. Code Ann. §58-9-540 (Supp. 1998).

With respect to BlueStar's interexchange business service offerings including consumer card, future private line, and customer network-type offerings, the Commission adopts a relaxed regulatory scheme identical to that granted to AT&T Communications in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C. Under this relaxed regulatory scheme, tariff filings for business services shall be presumed valid upon filing. The Commission will have seven (7) days in which to institute an investigation of any tariff filing. If the Commission institutes an investigation of a particular tariff filing within the seven days, the tariff filing will then be suspended until further Order of the Commission. Any relaxation in the future reporting requirements that may be adopted for AT&T shall apply to BlueStar also.

4. BlueStar's local exchange and exchange access telecommunications services shall be regulated in accordance with the principles and procedures established for flexible regulation first granted to NewSouth Communications by Order No. 98-165 in Docket No. 97-467-C. These procedures allow a rate structure incorporating a maximum rate level with the flexibility of adjustment below the maximum rate levels for local exchange services. Further, BlueStar's local exchange tariff filings are presumed valid upon filing, subject to the Commission's right within 30 days to institute an investigation of a tariff filing, in which case such tariff filing would be suspended

pending further order of the Commission, and tariff filings are subject to the same monitoring process as similarly situated competitive local exchange carriers.

5. BlueStar shall, in compliance with Commission regulations, designate and maintain an authorized utility representative who is prepared to discuss, on a regulatory level, customer relations (complaint) matters, engineering operations, and tests and repairs. In addition, BlueStar shall provide to the Commission in writing the name of the authorized representative to be contacted in connection with general management duties as well as emergencies which occur during non-office hours. BlueStar shall file with the Commission the names, addresses, and telephone numbers of those representatives within thirty (30) days of receipt of this Order. (Attachment A shall be utilized for the provision of this information to the Commission.) Further, BlueStar shall promptly notify the Commission in writing if the representatives are replaced.

6. BlueStar shall conduct its business in compliance with Commission decisions and Orders, both past and future, including but not limited to, any and all Commission decisions which may be rendered in Docket No. 96-018-C regarding local competition.

7. BlueStar is directed to comply with all Commission regulations unless a regulation is expressly waived by the Commission.

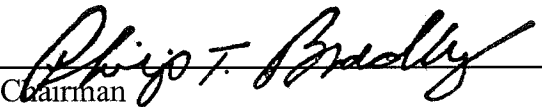
8. Title 23, Chapter 47, South Carolina Code of Laws Ann., governs the establishment and implementation of a "Public Safety Communications Center," which is more commonly known as a "911 system" or "911 service." Services available through a 911 system include law enforcement, fire, and emergency medical services. In

recognition of the necessity of quality 911 services being provided to the citizens of South Carolina, the Commission hereby instructs BlueStar to contact the appropriate authorities regarding 911 service in the counties and cities where the Company will be operating. Contact with the appropriate 911 service authorities is to be made before beginning telephone service in South Carolina. Accompanying this Order is an information packet from the South Carolina Chapter of the National Emergency Number Association (“SC NENA”) with contact information and sample forms. The Company may also obtain information by contacting the E911 Coordinator at the Office of Information Resources of the South Carolina Budget and Control Board. By this Order and prior to providing telecommunications services within South Carolina, BlueStar, shall contact the 911 Coordinator in each county, as well as the 911 Coordinator in each city where the city has its own 911 system, and shall provide information regarding the Company’s operations as required by the 911 system.

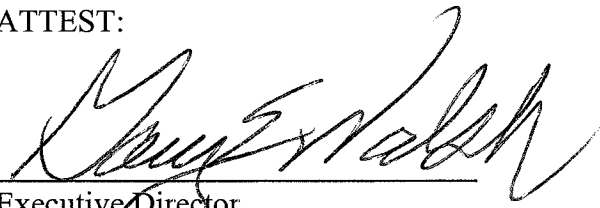
9. BlueStar shall file surveillance reports on a calendar or fiscal year basis with the Commission as required by Order No. 88-178 in Docket No. 87-483-C. The proper form for these reports is indicated on Attachment B.

10. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:


Chairman

ATTEST:


Executive Director

(SEAL)

BEFORE
THE PUBLIC SERVICE COMMISSION
OF
SOUTH CAROLINA

Docket No. 1999-215-C

Re: Application of BlueStar Networks, Inc. for a Certificate)	
of Public Convenience and Necessity to Provide Local)	
Exchange, Interexchange, and Exchange Access)	STIPULATION
Telecommunications Services in the State of)	
South Carolina)	
<hr/>		

The South Carolina Telephone Coalition ("SCTC") (see attachment "A" for list of companies) and BlueStar Networks, Inc. ("BlueStar") hereby enter into the following stipulations. As a consequence of these stipulations and conditions, the necessity for SCTC's intervention in this matter is avoided and SCTC withdraws its opposition to BlueStars' Application. SCTC and BlueStar stipulate and agree as follows:

1. SCTC does not oppose the granting of a statewide Certificate of Public Convenience and Necessity to BlueStar, provided the South Carolina Public Service Commission ("Commission") makes the necessary findings to justify granting of such a certificate, and provided the conditions contained within this stipulation are met.

2. BlueStar stipulates and agrees that any Certificate which may be granted will authorize BlueStar to provide service only to customers located in non-rural local exchange company ("LEC") service areas of South Carolina, except as provided herein.

3. BlueStar stipulates that it is not asking the Commission to make a finding at this time regarding whether competition is in the public interest for rural areas.

4. BlueStar stipulates and agrees that it will not provide any local service, by its own facilities or otherwise, to any customer located in a rural incumbent LEC's service area, unless and until BlueStar provides such rural incumbent LEC and the Commission with written notice of its intent to do so at least thirty (30) days prior to the date of the intended service. During such notice period, the rural incumbent LEC will have the opportunity to petition the Commission to exercise all rights afforded it under Federal and State law. Also, BlueStar acknowledges that the Commission may suspend the intended date for service in rural LEC territory for ninety (90) days while the Commission conducts any proceeding incident to the Petition or upon the Commission's own Motion, provided that the Commission can further suspend the implementation date upon showing of good cause.

5. BlueStar stipulates and agrees that if, after BlueStar gives notice that it intends to serve a customer located in a rural incumbent LEC's service area, the Commission receives a Petition from the rural incumbent LEC to exercise its rights under Federal or State law, or the Commission institutes a proceeding of its own, then BlueStar will not provide service to any customer located within the service area in question without prior and further Commission approval.

6. BlueStar acknowledges that any right which it may have or acquire to serve a rural telephone company service area in South Carolina is subject to the conditions contained herein, and to any future policies, procedures, and guidelines relevant to such proposed service which the Commission may implement, so long as such policies, procedures, and guidelines do not conflict with Federal or State law.

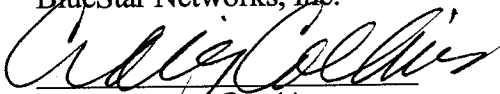
7. The parties stipulate and agree that all rights under Federal and State law are reserved to the rural incumbent LECs, and this Stipulation in no way suspends or adversely affects such rights, including any exemptions, suspensions, or modifications to which they may be entitled.

8. BlueStar agrees to abide by all State and Federal laws and to participate, to the extent it may be required to do so by the Commission, in the support of universally available telephone service at affordable rates.

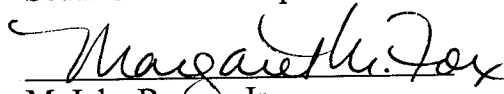
9. BlueStar hereby amends its application and its prefiled testimony in this docket to the extent necessary to conform with this Stipulation.

AGREED AND STIPULATED to this 29th day of June, 1999.

BlueStar Networks, Inc.


B. Craig Collins
Willoughby & Hoefler, P.A.
Post Office Box 8416
Columbia, SC 29202
(803) 252-3300
Attorneys for BlueStar Networks, Inc.

South Carolina Telephone Coalition:


M. John Bowen, Jr.
Margaret M. Fox
McNair Law Firm, P.A.
Post Office Box 11390
(803) 799-9800

Attorneys for the South Carolina
Telephone Coalition

ATTACHMENT A
South Carolina Telephone Coalition Member Companies
for Purposes of Local Service Stipulation

ALLTEL South Carolina, Inc.
Bluffton Telephone Company, Inc.
Chesnee Telephone Company
Chester Telephone Company
Farmers Telephone Cooperative, Inc.
Ft. Mill Telephone Company
Hargray Telephone Company, Inc.
Heath Springs Telephone Company Inc.
Home Telephone Company, Inc.
Lancaster Telephone Company
Lockhart Telephone Company
McClellanville Telephone Company
Norway Telephone Company
Palmetto Rural Telephone Cooperative, Inc.
Piedmont Rural Telephone Cooperative, Inc.
Pond Branch Telephone Company
Ridgeway Telephone Company
Rock Hill Telephone Company
Sandhill Telephone Cooperative, Inc.
St. Stephen Telephone Company
West Carolina Rural Telephone Cooperative, Inc.
Williston Telephone Company

DOCKET NO. 1999-215-C - ORDER NO. 1999-629
SEPTEMBER 3, 1999
ATTACHMENT A

**INFORMATION OF THE AUTHORIZED UTILITY
REPRESENTATIVES FOR INTEREXCHANGE, LOCAL
AND AOS COMPANIES**

PURSUANT TO SOUTH CAROLINA PUBLIC SERVICE COMMISSION
REGULATION 103-612.2.4(b), each utility shall file and maintain with the Commission
the name, title, address, and telephone number of the persons who should be contacted in
connection with Customer Relations/Complaints.

Company Name/DBA Name

Business Address

City, State, Zip Code

Authorized Utility Representative (Please Print or Type)

Telephone Number

Fax Number

E-Mail Address

This form was completed by Signature

If you have any questions, contact the Consumer Services Department at 803-896-5230

**ANNUAL INFORMATION ON SOUTH CAROLINA OPERATIONS
FOR INTEREXCHANGE COMPANIES AND AOS'S**

COMPANY NAME

FEI NO.

ADDRESS

CITY, STATE, ZIP CODE

PHONE NUMBER

- (1) SOUTH CAROLINA OPERATING REVENUES FOR THE 12 MONTHS ENDING
DECEMBER 31 OR FISCAL YEAR ENDING _____.
- (2) SOUTH CAROLINA OPERATING EXPENSES FOR THE 12 MONTHS ENDING
DECEMBER 31 OR FISCAL YEAR ENDING _____.
- (3) RATE BASE INVESTMENT IN SOUTH CAROLINA OPERATIONS* FOR
12 MONTHS ENDING DECEMBER 31 OR FISCAL YEAR ENDING _____.
- * THIS WOULD INCLUDE GROSS PLANT, ACCUMULATED DEPRECIATION,
MATERIALS AND SUPPLIES, CASH WORKING CAPITAL, CONSTRUCTION WORK IN
PROGRESS, ACCUMULATED DEFERRED INCOME TAX, CONTRIBUTIONS IN AID OF
CONSTRUCTION AND CUSTOMER DEPOSITS.
- (4) PARENT'S CAPITAL STRUCTURE* AT DECEMBER 31 OR FISCAL YEAR ENDING
_____.
- * THIS WOULD INCLUDE ALL LONG TERM DEBT (NOT THE CURRENT PORTION
PAYABLE), PREFERRED STOCK AND COMMON EQUITY.
- (5) PARENT'S EMBEDDED COST PERCENTAGE (%) FOR LONG TERM DEBT AND
EMBEDDED COST PERCENTAGE (%) FOR PREFERRED STOCK AT YEAR ENDING
DECEMBER 31 OR FISCAL YEAR ENDING _____.
- (6) ALL DETAILS ON THE ALLOCATION METHOD USED TO DETERMINE THE AMOUNT
OF EXPENSES ALLOCATED TO SOUTH CAROLINA OPERATIONS AS WELL AS
METHOD OF ALLOCATION OF COMPANY'S RATE BASE INVESTMENT (SEE #3
ABOVE).

SIGNATURE

NAME (PLEASE TYPE OF PRINT)

TITLE